

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0130P**

**Use Tax**

**Calendar Years 1993, 1994, 1995, and 1996**

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**ISSUE(S)**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer protests the penalty assessed on an audit completed on February 17, 1998.

Taxpayer failed to self-assess and remit use tax for calendar years 1993 and 1995. In 1994 and 1996 taxpayer made an effort to remit tax but paid a minimal amount.

Taxpayer maintains various sales offices in Indiana and operates a large product warehouse in Indiana.

**ISSUE**

1. **Tax Administration** – Penalty

**DISCUSSION**

Taxpayer requests a waiver of penalty and states the assessment was for use tax only and it is one hundred percent (100%) effective in billing and remitting over \$2.2 million in sales tax during the audit period.

Taxpayer further states two types of errors primarily caused the use tax assessment. First taxpayer uncovered a liability for use tax on spare parts related to maintenance agreements. At the start of the audit, it came forward voluntarily with this information, including an estimate of the amount of use tax due for this area of the audit. They have also incorporated procedures to calculate and remit this tax on a monthly basis, and have been doing so since January 1997.

The second part of the audit relates to use tax on fixed asset purchases. A substantial portion of this assessment was for items withdrawn from their own inventory for internal use. Taxpayer states it has always had automated systems in place to accrue use tax on items withdrawn from inventory. However, during the audit, it was discovered that although the system was in place and working for most departments, one department in Indianapolis had been set up incorrectly. This error went undetected for the duration of the audit. As the auditor can verify, all assets withdrawn from department 21733 automatically had use tax accrued and remitted. While those for department 1730 were set up with an incorrect tax code, and therefore didn't. As soon as the problem was detected, it was corrected immediately.

Taxpayer's audit revealed that no use tax was remitted in 1993 and 1995. For 1994 and 1996 only a minute amount was paid.

The taxpayer was negligent in failing to remit the proper tax or to make adjustments for the years that had no tax self assessed.

### **FINDING**

Taxpayer's protest is denied.